In the High Court of Uttaranchal, at

Nainital.

A.O. No. 500/2004

Satyaveer Sharma S/o Late Jodha Ram Sharma
R/o Houe No. 97/3, Avas Vikas Colony
Tehsil Kashipur, District U.S. Nagar ... Appellant.

Versus

1- Subrati Shah S/o Ghasita Shah
R/o Village Mahuvakhera Ganj
Tehsil Kashipur, District U.S. Nagar.

2- The Oriental Insurance Company Ltd.
Branch Ramnagar road,
Tehsil Kashipur District U.S. Nagar.

3- Mohammad Haneef S/o Tasleem Ahmad
R/o Mohalla Khatari, Tehsil Ramnagar
District Nainital.

4- United India Insurance Company Limited
Branch Ratan Cinema Road,
Tehsil Kashipur,
District U.S. Nagar .....Respondents.

Sri B.S. Parihar, learned counsel for the appellant.
Sri T.A. Khan and Sri Naresh Pant for the respondents.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 26-06-2006.

This appeal, U/S 173 of the Motor Vehicles Act, 1988 has been preferred against the judgment and award dated 29-9-2004, passed by M.A.C.T./District Judge Udham Singh Nagar (hereinafter referred as the 'Tribunal') in M.A.C.T. No. 28/2003, whereby the

claimant was awarded Rs. One lac as compensation along with interest @ 5% per annum from the date of presentation of the claim petition till the date of actual payment, payable by Oriental Insurance Company as well as by the United India Insurance Company in equa share.

2- The brief facts of the case are that on 31-5-2002 the claimant/appellant Satyaveer was coming to Kashipur from Dehradun riding in his Maruti Car No. U.P.-2-9919 and when at 11.45 P.M. the car reached at the Toletax Barrier near Har-Ki-Paudi, the driver of truck No. U.P. 14-2867 applied its brake due to which the car entered inside the back portion of the truck and the claimant sustained grievous injuries. The claimant filed claim petition for compensation of Rs. 10,00,000/-. In the claim petition he alleged that he got medical treatment at H.N.G. District Hospital, Haridwar, Medical College Meerut, Eye Hospital, New Deli, Dr. Satanshu Mathur, Kashipur, Dr. Rastogi Nursing Home, Kashipur Kausambhi Medical Center, Ghaziabad, Dr. R.P. Singh Sahibabad and other hospitals and spent about Rs. Two lacs.

3- O.P. Subrati Shah the owner of the Maruti Car No. U.P. 14/2867 filed W.S. before the Tribunal alleging therein that the Maruti Car was being driven cautiously at the time of the accident by its driver. The Maruti Car was insured with Oriental Insurance Company and the liability to pay compensation is on the Insurance Company.

4- The O.P. Oriental Insurance Company, the insurer of the Maruti Car filed W.S. alleging therein that the owner of the truck has admitted the accident hence, the

liability to pay compensation is of the insurer of the offending Truck No. U.P. 14/2867.

5- The O.P. owner of the offending truck No. U.P. 14/2867 has filed W.S. alleging therein that his truck at the time of accident was insured with United India Insurance Company, hence the liability is on the Insurance Company.

6- The insurer of the offending truck, the United India Insurance Company filed its W.S. alleging therein that the accident had occurred due to the faults of both Maruti Car as well as the Truck, hence both the Insurance Companies are jointly liable to pay the compensation.

7- The Tribunal on the basis of pleadings of parities, framed relevant issues. The claimant in support of his claim produced Sneh Raj as P.W.1, himself as P.W.2, Jai Pal Singh, P.W.3 and Kalyan Singh as P.W.4. He also filed the copy of F.I.R. lodged with regard to the accident. The claimant also filed various cash memos of purchase of medicines, x-rays, disability certificate and medical prescriptions, the owners of Maruti car and the Truck filed copies of insurance, driving licence registration etc. of their respective vehicles.

8- The Tribunal on assessment of evidence on record allowed the claim petition and awarded Rs. One lac as compensation along with interest @ 5% per annum from the date of presentation of claim petition till actual payment payable by both the insurance companies in equal share.

9- Being dissatisfied with the compensation amount, the claimant has filed this appeal for enhancement of compensation.

10- We have heard the learned counsel for the parties and perused the record.

11- The impugned judgment and award passed by the Tribunal has been assailed on the ground that the Tribunal has recorded incorrect finding with regard to the income of the appellant. It has further been submitted that the Tribunal has committed an error apparent on the face of the record by ignoring the disability certificate submitted by the appellant before the Tribunal, in which it is indicated that the appellant has suffered a permanent disability upto an extent of 75%. It has also been submitted that the amount awarded by the Tribunal is meager and liable to be enhanced.

12- The evidence on record shows that the appellant was travelling in Maruti Car No. U.P. 02-9919 and this car dashed with truck No. U.P. 14/ 2867 from behind. The issue with regard to the rash and negligent driving of the vehicles involved in the accident has rightly been decided by the Tribunal as it is evident from the evidence on record that both the vehicles, i.e. the Maruti Car in which the appellant was travelling as well as the truck involved in the accident with which the Maruti Car dashed, are responsible for causing contributory negligence resulting this accident. The offending truck in question was insured with United India Insurance Company while the Maruti Car involved in this accident was insured with Oriental Insurance Company at the time of the accident, therefore the liability of paying the amount of compensation is with both the Insurance

Companies. The Tribunal has rightly recorded a finding that both the offending vehicles are equally liable for causing the contributory negligence which resulted this accident, therefore, the Insurance Companies of both the vehicles are liable to pay the amount of compensation equally.

13- As far as the quantum of compensation is concerned, it is evident from the record that the claimant/ appellant has not adduced any cogent and reliable evidence in order to show his actual income. Although it has been pleaded by the appellant that his monthly income was Rs. 7,000/-and now on account of his permanent disability he has become incapable of doing his job as well as his agricultural work. In absence of any cogent evidence, showing the actual income of the appellant, it will be presumed that the notional income should be taken into account for calculating the amount of compensation to be awarded in favour of the appellant. In view of the provisions of Section 163-A of the Motor Vehicles Act the notional income of a person after deducting 1/3rd against the personal expenses, comes to Rs. 10,000/- per annum. The appellant has filed certain documents in order to show that he has income from the agriculture, but the documents reveal that the appellant has already hypothecated his agricultural land, therefore, the actual income of the appellant is not established from any document filed by the appellant himself.

14- The age of the appellant, as is evident from the record, is 47 years. Although the appellant has not adduced any evidence in order to show his actual age, but any-how keeping in view this factor that the respondents have not adduced any evidence before the Tribunal to contradict the age of the appellant, hence for

the purpose of awarding the compensation to the appellant, his age would be considered as 47 years on the date of the accident.

15- The evidence further reveal that the appellant has filed the disability certificate issued by the Chief Medical Officer, Udham Singh Nagar. Although the photostate copy is on record which indicates that the appellant has become visually disabled upto an extent of 75%. This disability certificate which has been filed by the appellant before the Tribunal has not been taken into consideration by the Tribunal on the ground that the same is not an original one and further it has not been proved by the competent authority.

16- We are unable to accept this finding recorded by the Tribunal. Although the certified copy of the disability certificate has been filed by the appellant before the Tribunal but neither the Insurance Companies nor the owners of the vehicles involved in the accident, have filed any document rebutting the disability certificate filed by the appellant, therefore, there was no justification for either disbelieving or ignoring the medical certificate issued by the competent authority showing therein that the appellant has become visually handicapped upto an extent of 75%. The disability certificate has been issued by a competent authority and in the summary trial like accident claim cases the law is not to be taken in a very strict sense in order to prove the documents, particularly those documents which are issued by the competent authorities. Therefore, the Tribunal has erred in disbelieving/ignoring the disability certificate filed by the appellant.

17- As the disability certificate indicates that the appellant has become disabled upto an extent of 75% and this fact cannot be ignored that eye is a very important organ of the body. The appellant has become visually disabled upto an extent of 75% therefore he would not be in a position to perform his normal routine functions. The age of the appellant is only 47 years and in this age if a person becomes visually handicapped, then certainly his rest of the life will come to peril. Therefore keeping in view the disability certificate the appellant would certainly be entitled for compensation after calculating the amount in accordance with the provisions of law.

18- As we have already indicated that the age of the appellant was 47 years at the time of the accident. In case if the notional income of the appellant is taken into consideration and a multiplier of 13 is applied, then keeping in view his age, the amount of compensation comes to Rs. 10,000/ x13= 1,30,000/-. Now keeping in view the disability of the appellant upto an extent of 75% the amount of compensation payable to appellant comes to Rs. 97,500/-.

19- The documents available on record further show that the appellant has invested a sum of Rs. 94,000/- for his medical treatment and this amount is to be paid to the appellant. Therefore, the total amount of compensation to be paid to the appellant comes to Rs. 97,500/ + 94,000/= Rs. 1,91,500/-.

20- The Tribunal has awarded an amount of Rs. 6000/- to the appellant under other heads but as we have already assessed the amount of compensation to the appellant keeping in view his permanent disability therefore we do not find it proper to award that additional

therefore we do not find it proper to award that additional amount of Rs. 6,000/- which has been granted by the Tribunal. The finding recorded by the Tribunal to this effect is set aside.

21- The rate of interest as has been indicated in the impugned judgment and award needs no interference.

21- The rate of interest as has been indicated in the impugned judgment and award needs no interference.

22- On the basis of the assessment of evidence on record we come to the conclusion that the appeal is liable to be partly allowed and the impugned judgment and award passed by the Tribunal deserves to be modified to the extent that the appellant/injured should be paid an amount of Rs. 1,91,500/- as compensation instead of Rs. 1,00,000/- awarded by the Tribunal.

23- Accordingly the appeal is partly allowed. The judgment and award dated 29-9-2004, passed by MACT/District Judge, U.S. Nagar in MACP No. 28/2003, is modified upto the extent that the appellant/claimant is entitled to get Rs. 1,91,500/- as compensation instead of Rs. 1,00,000/- as has been awarded by the Tribunal. No order as to cost.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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